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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/986,967
Filing Date: November 13, 2001
Appellant(s): DESAI

Leon R. Turkevich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 10, 2007 appealing from the Office action mailed January 11, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

- Beyda, (2003/0061451) issued on March 27, 2003.
- Schloss et al., (6,249,844) issued on June 19, 2001.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-2, 13-14, 20-21, and 32-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Beyda, United States Patent Application Publication Number 2003/0061451 (hereinafter Beyda).

2. With respect to claims 1, 13, 20, and 32, Beyda teaches a method of providing content to a device [= client **10**, **12**, and/or **14**] according to Hypertext Transport Protocol (HTTP) [see abstract and figs. 1-2], the method comprising:
- receiving an HTTP request [paragraphs 0016-0020] for a first content object [For example, the web page having the URL "www.cnn.com" has three graphic files and an audio file, the URLs of each of the graphic files and audio file is also listed under the main web page as sub-entries, see paragraph 0017. Therefore, Beyda teaches that sub-entry is a first content object];
 - identifying a content operation identifier [= URLs, paragraph 0017] that identifies a corresponding second content object [For instance, the web page having the URL "www.cnn.com" has three graphic files and an audio file, the URLs of each of the graphic files and audio file is also listed under the main web page as sub-entries, see paragraph 0017. Therefore, Beyda teaches that sub-entry is a corresponding second content object] determined as relevant to the first content object by a predictive caching operation [paragraphs 0024-0028], the content operation identifier including a directive for prefetching the second content object as a content operation distinct from presentation of the first content object by the device [paragraphs 0021-0028]; and
 - sending to the device an HTTP response to the HTTP request [paragraphs 0016-0028], the HTTP response including the first content object and the content operation identifier, enabling the device to perform the prefetching of the second

content object based on receipt of the content operation identifier and distinct from the presentation of the first content object [figs.1-2].

3. With respect to claims 2, 14, 21, and 33, Beyda further teaches the identifying the step includes retrieving, based on retrieval of a first stored file containing the first content object, a second stored file associated with the first stored file and containing the content operation identifier [fig.2].

4. Claims 3-4, 6, 8-9, 11, 15-16, 18, 22-23, 25, 27-28, 30, 34-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyda as applied to claims 1, 13, 20, and 32 above, and further in view of Schloss et al., U.S. Patent No. 6,249,844 (hereinafter Schloss).

5. With respect to claims 3, 6, 8, 11, 15, 18, 22, 25, 27, 30, 34, and 37, Beyda does not explicitly show the sending step includes adding to the first content object a content operation tag that specifies the content operation identifier including

In a method of providing content to a device, Schloss discloses the sending step includes adding to the first content object a content operation tag [figs.3-4 i.e. a content operation is interpreted as <include>] that specifies the content operation identifier including a directive tag [330 i.e. HREF statement to reference the persistent fragment] specifying the corresponding content

operation to be performed by the device and an object identifier [i.e. "125.1" and "28.3"] that specifies a location of second content object [col.5, ln.36 - col.6, ln.30 i.e. indicating the reference to the fragment].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Beyda in view of Schloss by including a directive tag because this feature is more flexible and make it easier to incorporate various type of dynamic information [Schloss, col.2, lns.25-26]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify Fishman in view of Schloss in order to generate different versions for different types of devices [Schloss, col.3, lns.10-11].

6. With respect to claims 4, 9, 16, 23, 28, and 35, Beyda further teaches the first content object is a Hypertext Markup Language (HTML) document [paragraph 0017].

However, Beyda does not explicitly show the adding step including inline prepending the content operation tag from the second stored file into the HTML document.

In a method of providing content to a device, Schloss discloses the adding step including inline prepending the content operation tag from the second stored file into the HTML document [col.2, ln.33 - col.3, ln.32].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Beyda in view of Schloss by including inline prepending the content operation tag from the second stored file into the HTML document because this feature is more flexible and make it easier to incorporate various type of dynamic information [Schloss, col.2, Ins.25-26]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify Fishman in view of Schloss in order to generate different versions for different types of devices [Schloss, col.3, Ins.10-11].

(10) Response to Argument

In the remarks, applicant argued in substance that

I. Beyda does not disclose or suggest the claimed HTTP response including the first content object and directive for prefetching an identified second content object.

As to point (I), the Examiner respectfully disagrees because Appellant's argument does not commensurate with the scope of the claims. Claims 1, 13, 20, and 32 only recite the limitation of sending to the device an HTTP response including the first content object and the content operation identifier including a directive for prefetching the second content object. However, claims 1, 13, 20, and 32 do not recite the limitation of sending to the device an HTTP response including the first content object and directive for prefetching an identified second

content object (emphasis added). Beyda discloses sending to the device an HTTP response [=element-by-element downloading, paragraph 0028 and/or HTTP response from remote server 18 and/or local server 14, fig.1] including both the first content object [= sub-entry URLs such as either object **36**, **38**, **40**, or **42**] and the content operation identifier [= URL, paragraph 0017] that includes a directive for prefetching the second content object [= predictively pre-fetch web pages and their corresponding elements, e.g. URL, paragraphs 0017, 0021, and 0028]. For example, Beyda discloses HTTP response [= element-by-element downloading, paragraph 0028 and/or HTTP response from remote server 18 and/or local server 14, fig.1]. In page 7, line 19, of the specification, the applicant discloses a directive tag **42a** specifying a prefetch operation. However, the claims specify that a directive for prefetching the second content object which is nothing more than pre-ftetching portion of a single cache e.g. its URL [paragraphs 0017-0028].

Furthermore, in response to Appealant's argument that the reference also must disclose that the elements are arranged as in the claims under review, the Examiner respectfully disagrees. The Appeallant's argument does not commensurate with the scope of the claims because each element of the claimed invention is not claimed in an arranged order.

II. The rejection improperly ignores explicit claim language that the directive for prefetching is within an HTTP response output to/received by another device distinct from the originator of the directive.

As to point (II), the Examiner respectfully disagrees because the Appellant's argument does not commensurate with the scope of the claims. Claims 1, 13, 20, and 32 only recite the limitation of sending to the device an HTTP response including the first content object and the content operation identifier including a directive for prefetching the second content object as a content operation distinct from presentation of the first content object by the device. However, claims 1, 13, 20, and 32 do not recite the directive for prefetching is within an HTTP response output to/received by another device distinct from the originator of the directive (emphasis added). Beyda discloses sending to the device an HTTP response [= element-by-element downloading, paragraph 0028 and/or HTTP response from remote server 18 and/or local server 14, fig.1] including both the first content object [= sub-entry URLs such as either object 36, 38, 40, or 42] and the content operation identifier [= URL, paragraph 0017] that includes a directive for prefetching the second content object [= predictively pre-fetch web pages and their corresponding elements, e.g. URL, paragraphs 0017, 0021, and 0028] as a content operation distinct from presentation of the first content object by the device [= predictive caching operation can operate independently (i.e. distinct) from the element-by-element downloading operation, paragraph 0028]. For example, Beyda discloses HTTP

response [= element-by-element downloading, paragraph 0028 and/or HTTP response from remote server 18 and/or local server 14, fig.1]. In page 7, line 19, of the specification, the applicant discloses a directive tag **42a** specifying a prefetch operation. However, the claims specify that a directive for prefetching the second content object which is nothing more than pre-ftetching portion of a single cache e.g. its URL [paragraphs 0017-0028].

III. Claims 3-4, 6, 8-9, 11, 15-16, 18, 22-23, 25, 27-28, 30, 34-35, and 37 are not rendered obvious under 35 USC 103 in view of Beyda and Schloss.

As to point (III), in response to Appellant's argument that the examiner's conclusion of obviousness is based upon hypothetical combination which is no more than the predictable use of prior art elements according to their established functions, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hypothetical reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Beyda in view of Schloss by including a directive tag because this feature is more flexible and make it easier to incorporate various type of dynamic information [Schloss, col.2, lns.25-26]. It is for this reason that one of ordinary skill in the art at the time of the invention

would have been motivated to modify Fishman in view of Schloss in order to generate different versions for different types of devices [Schloss, col.3, Ins.10-11].

In response to Appellant's argument that Schloss does not disclose or suggest the claimed adding the content operation tag to the existing first content object, the Examiner respectfully disagrees. Schloss discloses adding the content operation tag [= segment tag 330₁'] to the existing first content object [= segment such as 330₁ and/or 330₂] [figs.3-4].

In response to Appellant's argument that Schloss provides no disclosure whatsoever of prefetching content, the Examiner respectfully disagrees. Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references as show in the above. In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Beyda in view of Schloss by including a directive tag because this feature is more flexible and make it easier to incorporate various type of dynamic information [Schloss, col.2, Ins.25-26]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify Fishman in view of Schloss in order to generate different versions for different types of devices [Schloss, col.3, Ins.10-11].

Furthermore, in response to Appellant's argument that Schloss fails to teach adding a content operation tag, the Examiner respectfully disagrees.

Schloss disclose adding the content operation tag [= segment tag 330₁']. For example, Schloss discloses each of the persistent fragments is replaced [= added] with an "include" statement [= content operation tag] referring to the name of the fragment [col.5, ll.53-65]. According to Merriam-Webster online, replace is to put something new in the place of. In order to put something new in the place of its adding must be performed. Each of the persistent fragments is replaced by Schloss all inherently include adding a content operation tag and therefore meet Appellant's recitation of adding the content operation tag.

(11) Evidence Appendix

None

(12) Related Proceedings Appendix

None

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For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



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November 09, 2007

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